

REMARKS

Entry of the foregoing, reexamination and further and favorable reconsideration of the subject application in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested.

By the foregoing amendment, claim 24 has been amended and claim 40 has been newly added. Support for the amendment to claim 24 can be found throughout the originally filed application. The amendments to claim 24 are made to clarify applicants' invention and are not intended to limit the scope of any element recited therein. Support for new claim 40 can be found on at least page 12, line 30 of the originally filed application. No new matter has been added by the present amendment.

Turning now to the Official Action, the Examiner has rejected claims 24-39 under 35 U.S.C. § 112, second paragraph, for purportedly failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. More particularly, the Examiner has stated that "it is not clear what is meant by the phrase 'vector of at least 20kb into the genome of which an exogenous DNA sequence is inserted.'" Applicants respectfully traverse this rejection. However, in order to expedite prosecution, and not to acquiesce to the Examiner's rejection, applicants have amended claim 24. As amended claim 24 no longer recites the phrase cited by the Examiner, such rejection is moot. Accordingly, withdrawal of the rejection of claims 24-39 under 35 U.S.C. § 112, second paragraph, is respectfully requested.

Claims 24-39 have been rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was allegedly not described in the specification in such a way as to reasonably convey the one skilled in the art that the inventors had possession of the claimed invention. In particular, the Examiner has stated that "the only portions deleted in possession of applicant[s] at the time of filing are those relating to E1, E2, E3 and E4 regions." This rejection is respectfully traversed.

Figure 1 of the present application shows that the adenoviral genome comprises the E1, E2, E3 and E4 regions. Since, as recognized by the Examiner, applicants were in possession of modifications and/or deletions of the E1, E2, E3 and E4 regions, applicants were in possession of modifications and/or deletions in the adenoviral genome. It appears from the Official Action, however, that the Examiner may consider there to be modifications and/or deletions in the encapsidation region and the 5' and 3' ITRs. Thus, to clarify applicants' invention, and not to acquiesce to the Examiner's rejection, claim 24 has been amended to indicate that the recombinant adenoviral vector obtained by the method according to the invention comprises the encapsidation region and the 5' and 3' ITRs. Support for this amendment can be found on at least page 9, lines 27-28 of the originally filed application. Further, this amendment to claim 24 is not intended to limit the scope of any element recited in such claim.

In view of the above, the Examiner is respectfully requested to withdraw the rejection of claims 24-39 under 35 U.S.C. § 112, first paragraph.

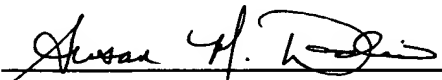
Lastly, the Examiner has rejected claims 24-39 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,110,735. This rejection is respectfully traversed. However, in order to expedite prosecution, and not to acquiesce to the Examiner's rejection, applicants have submitted herewith a duly executed Terminal Disclaimer and Statement Under 37 C.F.R. § 3.73(b). In view of this submission, the Examiner's obviousness-type double patenting rejection is overcome and withdrawal of such is therefore respectfully requested.

From the foregoing, further and favorable action in the form of a Notice of Allowance is respectfully requested and such action is earnestly solicited.

In the event that there are any questions relating to this Amendment and Reply, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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